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Paper No. 17

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MAR 10 2003

In re Application of  
Wilhelm F. Maier  
Application No. 09/254,525  
Filed: March 8, 1999  
Attorney Docket No.: STUDIEN262-K  
Title: USE OF MICROPOROUS  
ANORGANIC MEMBRANE CATALYSTS

**OFFICE OF PETITIONS**

**DECISION ON RENEWED PETITION**

This is a decision on the renewed petition to withdraw the holding of abandonment filed on February 19, 2003, pursuant to 37 C.F.R. §1.181(a).

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR §1.113 in a timely manner to the final Office action mailed August 10, 2001, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR §1.136(a) were obtained. Accordingly, the above-identified application became abandoned on September 11, 2001. A Notice of Abandonment was mailed on April 4, 2002.

The original petition, filed on August 12, 2002, was dismissed via a decision mailed by the Office on December 19, 2002, for failure to submit a docket report.

With the instant petition, petitioner has submitted a copy of a page of a calendar, and it is submitted that this is a docket report, which confirms that this final Office action was not received by the petitioner.<sup>1</sup>

Petitioner further sets forth the following argument on page 4 of the renewed petition:

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<sup>1</sup> It is noted that this paper was submitted with the original petition. Unfortunately, it was not recognized as such, and the submission was not fully explained. With the renewed petition, the petitioner has elaborated on its contents.

The undersigned notes that the original petition was a "form" petition and the evidence submitted was "form" evidence ordinarily submitted with the form petition, and such form evidence have been accepted by the Patent Office in every single case where submitted, and the number of prior cases is more than five.

Regarding the argument that similar petitions have been filed previously using similar evidence, and have been accepted by the Office, the petitioner has established a pattern of non-receipt. It is noted that the showing necessary to establish non-receipt of an Office action may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions)<sup>2</sup>.

In this case however, it certainly appears that the Office Action truly was not received. Petitioner states that the Office records might not have been updated to include his current address, and states that the Office Action was likely sent to the wrong address. Petitioner is correct, as the action was mailed to petitioner's former address on August 10, 2001. Sometime in March, 2002<sup>3</sup>, petitioner submitted a change of correspondence address to the Office. It would appear that the petitioner moved prior to around August 10, 2001, and did not notify the Office until roughly seven months later in March.

MPEP 601.03 states, in part:

Where an attorney or agent of record (or applicant, if he or she is prosecuting the application pro se) changes his or her correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP Code). The notification should also include his or her telephone number.

The petitioner moved without notifying the Office, and the Office mailed the Office Action to petitioner's address of record.

Petitioner's failure to notify the Office contemporaneously with his Change of Correspondence Address precludes Petitioner later demanding withdrawal of the holding of abandonment.

Petitioner's only relief is a petition under 37 C.F.R. §1.137(b), and - having been made aware of this reality - Petitioner's delay in promptly seeking relief under 37 C.F.R. §1.137(b) may be considered evidence of intentional delay and an absolute bar to revival.

Consequently, the renewed petition is **DISMISSED**.

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<sup>2</sup> MPEP 711.03(c)II.

<sup>3</sup> Petitioner has submitted two documents pertaining to the change of correspondence address referenced in the petition. The first is a letter dated March 18, 2002. The second is a record of "Notice of Change of Firm Name and Firm Address" for all pending applications before art unit 1750. The record further contains the text "Date Mailed March 28, 2002".

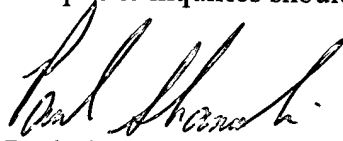
**NOTICE:**

Any request for reconsideration of this decision under 37 C.F.R. §181(a) must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. Failure to respond will result in abandonment of the application. The request for reconsideration should include a cover letter entitled "Second Renewed Petition under 37 C.F.R. §181(a)," and should only address the deficiencies noted in this decision.

**Thereafter, there will be no further reconsideration of this matter**<sup>4, 5</sup>.

**The application file will be retained in the Office of Petitions for two (2) months.**

Telephone inquiries should be directed to Petitions Attorney Paul Shanowski at (703) 305-0011.



Paul Shanowski  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>4</sup> For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Loudon, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R. §§1.181, 182, 183.

<sup>5</sup> If, on the second request for reconsideration, Petitioner fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) provisions for reconsideration, such as those at 37 C.F.R. §1.137(e), will not apply to that decision.